



Office of the Attorney General
State of Texas

August 24, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Dan Pearson
Executive Vice-President
Texas Guaranteed Student Loan Corporation
P. O. Box 15996
Austin, Texas 78761-5996

OR92-305

Dear Mr. Pearson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15291.

You have received a request for information relating to the meetings and activities of the Texas Student Loan Corporation (the "corporation") and its staff. Specifically, the requestor seeks:

Any memos during December 1991 and January 1992 from Joe McCormick or corporation staff to board members and/or staff regarding contacts or conversations with Don Ray or relating to the loan-collection performance of the firm Ray, Wood & Fine.

Transcripts of all full board and board committee meetings since Dec. 1, 1991.

Memos or other material from corporation staff to board members since Dec. 1, 1991 regarding Small, Craig & Werkenthin, Buddy Jones or Ray, Wood & Fine and Don Ray.

Any U.S. Department of Education reviews or audits of the Texas Guaranteed Student Loan Corporation since August 1989.

Although you do not object to release of some of the requested information, you have submitted to us for review three categories of information containing ten

documents which you claim are excepted from required public disclosure by the attorney-client privilege aspect of section 3(a)(1) and by sections 3(a)(3) and 3(a)(11) of the Open Records Act.

You have submitted to us for review three categories of information. The first category of information submitted to us consists of three letters exchanged between corporation board members. The second category of information consists of six letters or memoranda exchanged between corporation counsel and board members or staff. The third category consists of a corporation finance committee agenda item.

Section 3(a)(3) of the Open Records Act excepts:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

Although this office has frequently cited section 3(a)(1) to except from disclosure information within the attorney-client privilege, the privilege is more specifically covered under section 3(a)(7). Open Records Decision No. 574 (1990). Open Records Decision No. 574 held that protection of section 3(a)(7) was limited to information that revealed client confidences to an attorney or that revealed the attorney's legal advice. Information that does not contain legal advice or opinion or reveal client confidences is not protected by section 3(a)(7). *Id.*

Section 3(a)(11) protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." It is well established that the purpose of section 3(a)(11) is to protect from public

disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. This protection is intended to encourage open and frank discussion in the deliberative process. *See, e.g., Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision Nos. 538 (1990); 470 (1987). Purely factual information, however, does not constitute advice, opinion, or recommendation and may not be withheld under section 3(a)(11). Open Records Decision No. 450 (1986).

You claim that the first category of information is excepted from required public disclosure by section 3(a)(11) of the Open Records Act. The letter dated July 7, 1989, contains no advice, opinion, or recommendation. Accordingly, it may not be withheld under section 3(a)(11) and must be released. The letters dated November 14, 1988, and July 12, 1989, however, contain some advice, opinion, or recommendation. For your convenience, we have marked the portions of these letters which may be withheld under section 3(a)(11). The remainder of the letters must be released.

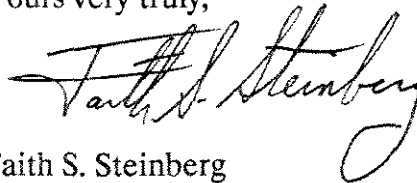
You claim that the second category of information is excepted from required public disclosure by the attorney-client privilege and by sections 3(a)(3) and 3(a)(11) of the Open Records Act. With regard to your 3(a)(3) claim, you advise us that some of the requested documents could relate to collection litigation related to defaulted student loans held by the corporation. However, you neither demonstrate the pendency of litigation nor how litigation might be reasonably anticipated. Moreover, you do not explain how the requested information might relate to any litigation to which the corporation may be party. As we have no basis to conclude that litigation is pending or reasonably anticipated, none of the requested information may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act.

With regard to your attorney-client privilege claim, the letters dated December 2, 1991, December 23, 1991, January 17, 1992, January 27, 1992, and June 27, 1991 contain client confidences excepted from public disclosure by the attorney-client privilege. Any other information contained in these letters is inextricably intertwined with the excepted information. Accordingly, we conclude that these documents may be withheld in their entirety. The memorandum dated January 5, 1988, contains a mixture of legal advice and non-legal advice, opinion, and recommendation. We find that this memorandum may be withheld in its entirety under sections 3(a)(7) and (11).

Finally, you claim that the documents in the second category of information and the finance committee agenda item are excepted from required public disclosure by section 3(a)(11). As noted above, the documents in the second category of information contain advice excepted from required public disclosure as legal advice under section 3(a)(7). In addition, the memorandum dated January 5, 1988 contains some non-legal advice, opinion, or recommendation which is protected under section 3(a)(11). This information is marked for your convenience. The finance committee agenda item contains some advice, opinion, and recommendation. For your convenience, we have marked the information which may be withheld from required public disclosure under section 3(a)(11). Information that has not been marked must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-305.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Faith S. Steinberg".

Faith S. Steinberg
Assistant Attorney General
Opinion Committee

FS/MRC/GCK/lmm

Ref.: ID# 15291
ID# 15636

cc: Mr. Gardner Selby
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